



Data Protection Technical Guidance Note

Access to pupils' information in Scotland

This guidance is aimed at education authorities¹ and independent schools in Scotland to help them understand their responsibilities under the Data Protection Act 1998 (the Act) regarding requests for access to pupils' information. The note also covers the separate right of access that parents, have to the official educational records of their child.

What rights exist for access to a pupil's personal information?

There are two distinct rights to information held by local authorities in Scotland.

- 1 The subject access right – under the Act a pupil has the right to a copy of their own information. In certain circumstances requests may be made by a parent on behalf of their child.
- 2 Rights to the educational record – under the Pupils' Educational Records (Scotland) Regulations 2003, referred to here as the Regulations, a parent has the right to access their child's educational record.

Under the subject access right parents will only be able to see information about their child when the child is unable to act on their own behalf or gives their consent.

Who has responsibility for requests for information?

Under the Act and Regulations requests for pupil information held by schools should be dealt with by the education authority or the proprietor of an independent school.

1 The subject access right

Under the Act, a pupil, or someone acting on their behalf, has the right to access their personal information processed by the education authority or independent school. This includes:

- information held on computer (or other automated means);
 - information held in structured files;
- and, if the request is made to an education authority
- information in their educational record; and
 - unstructured information, for example, held in loose correspondence.

¹ In this note the term "education authority" will have the meaning of the Education (Scotland) Act 1980 and, in relation to a self governing school, will be the board of management within the meaning of the Self-Governing Schools etc. (Scotland) Act 1989.

It is likely that most of a pupil's personal information will be held by an education authority as part of the educational record. The definition of an "educational record" in Schedule 11 of the Act is wide and includes, regardless of its form, any information about current and past pupils that is processed by or on behalf of the education authority for the purposes of its educational functions. It may also include information relating to social, cultural and recreational activities organised or facilitated by the school. Independent schools are not obliged under the Act to release to pupils the information in their educational record. However, they are obliged to release to pupils information that is held about them on computer or as part of a highly structured manual filing system. Consequently, independent schools may well take the view that they wish to release the information in the educational record, particularly as they are obliged under the Regulations (see the section 'What is an educational record' below) to allow parents access to the material that the Regulations define as an educational record.

Requests have to be made in writing and the education authority or independent school is entitled to ask for any further information reasonably required to locate the information and satisfy itself about the identity of the person making the request.

A pupil is also entitled to be told whether or not the personal information they want is held by the education authority or independent school, and to ask what that information is. They will also be entitled to a description of the information, the purposes it is used for, who it is released to, and any information available about the source of the information. The information must be supplied in an intelligible form (so any codes should be explained) and should be in hard copy unless it is not possible to do this, it would involve a disproportionate effort, or if the child or parent agrees to access the information in another form.

At what age can a child make their own subject access request?

The Act does not specify an age at which a child can make their own request for access to their information. When a request is received from a child for access to their own information, those responsible for responding should take into account whether:

- the child wants their parent (or someone with parental responsibility for them) to be involved in the request; and
- the child properly understands what is involved in making the request and the type of information they will receive.

When an assessment has to be made about whether a child under 16 can exercise their rights under the Act, the general guide is that a child of 12 or older is expected to be mature enough to understand the request they are making. A child may, of course, be mature enough at an earlier age or may lack sufficient maturity until a later age, and so requests should be considered on a case-by-case basis.

What happens if there is information about other individuals in the information requested?

Where the response includes information about another individual, the request should be considered carefully. There is a duty to consider the rights of the individual making the request and the privacy of any other individuals who may be identified. For advice on how to deal with general subject access requests containing information about another individual, please see our guidance '[Subject access requests involving other people's information](#)'

Can any other information be withheld?

There are two situations when information may be withheld. The first is when the information is covered by an exemption in the Act (see (a) below). The second is when the cost of supplying information held in an unstructured way would exceed the set limits (see (b) below).

a The main exemptions when information may be withheld relate to:

- information which might cause serious harm to the physical or mental health of the pupil or another individual;
- information provided by a principal reporter for children's hearing;
- information contained in adoption and parental order records;
- information given to a court in proceedings under the Children's Hearings (Scotland) Rules 1996;
- copies of examination scripts; and
- providing examination marks before they are officially announced.

If the information relates to exam marks and scripts, please see our guidance on '[Individuals' rights of access to examination records](#)'.

Please contact our office if you need detailed advice about how an exemption applies.

b Unstructured personal information.

Where a request is made to an education authority, the Act limits the action it must take to respond to a request from a child, or parent acting for them, for personal information held manually and in a completely unstructured way. This needs to be distinguished from personal information held in highly or partly structured files, such as a teacher's own records with sections for different classes and pupils, to which the normal rules of subject access apply.

Where the request is for unstructured personal information, local authorities are entitled to ask for a description of the information to help them find it. They do not have to supply the information, or confirm whether or not it exists, if it would cost more than £450 to do either of these things. This cost structure is in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Guidance on this is

available from the Department for Constitutional Affairs website at www.foi.gov.uk/practitioner/feesguidance.htm

2 The parents' right of access to their child's educational record

As stated earlier the Regulations give a parent their own independent right of access to their child's educational record.

What is an educational record

The Regulations provide a definition of an 'educational record' as meaning any records of information, excluding information in a Record of Needs, which:

- are processed by or on behalf of the education authority or independent school;
- relate to any current or former pupil at the school in question; and
- relate to the school education of that pupil.

The educational record is confined to information that comes from a teacher or other employee of an education authority or independent school, the pupil or their parents. It is only the information included in this definition that parents will have a right to access under the Regulations. Information kept by a teacher solely for their own use does not form part of the official educational record. An educational record must only be kept for a period of five years after the end of the pupil's school education.

It is worth noting that this definition of an educational record differs from that given in Schedule 11 of the Act.

How should a request be made?

A parent should make the request in a permanent form such as in writing or in an audio or visual format to the education authority or independent school. The request should include the name of person making the request, an address for correspondence and a description of the information being requested. The education authority or independent school is entitled to ask for information they may reasonably require in order locate the information requested and to satisfy themselves as to the identity of the person making the request.

Can any of the information in the educational record be withheld from the parent?

- a. The Regulations state that any information which is covered by an order under sections 30(2) and 38(1) of the Data Protection Act must not be disclosed. This includes:
 - any information relating to proceedings under the Act of Sederunt (Child Care and Maintenance Rules) 1997 or the Children's Hearings (Scotland) Rules 1996;
 - the statement of special educational needs;
 - Information provided by a principal reporter for children's hearing; and
 - information contained in adoption and parental order records.

- b. The Regulations also state that no information that is sensitive personal data under the Act should be disclosed. Sensitive personal data means any information as to:
- the racial or ethnic origin of an individual;
 - their political opinions
 - their religious beliefs or other beliefs of a similar nature;
 - trade union membership;
 - their physical or mental health or condition;
 - their sexual life;
 - the commission or alleged commission of any offence by them; and
 - any criminal proceedings.
- c. . In addition, the Regulations state that no information should be disclosed that would be likely to cause significant distress or harm to the pupil or any other person.
- d. . Confidential references given or to be given by the education authority or independent school for purposes of education, training, employment of the pupil should not be disclosed.

3 What are the timescales for dealing with requests?

A response to a subject access request for personal information must be made promptly and at most within 40 calendar days. However, the 40 days does not begin until any fee, if charged (see below), and any further information about identity or the location of the information is received.

Requests under the Regulations from parents for information that is for the official educational record must receive a response within 15 school days. Unless the request is simply to see the official educational record, schools and authorities are entitled to receive any fee first (see below).

4 Can a charge be made for accessing personal information?

There is no obligation to charge a fee. However, if a subject access request is made for information containing, in whole or part, the 'educational record', the amount that can be charged depends on the number of pages provided. The fees work on a scale basis as shown below.

Number of pages	Maximum fee
1-19	£1
20-29	£2
30-39	£3
40-49	£4
50-59	£5
60-69	£6

70-79	£7
80-89	£8
90-99	£9
100-149	£10
150-199	£15
200-249	£20
250-299	£25
300-349	£30
350-399	£35
400-449	£40
450-499	£45
500+	£50

If a subject access request is made which does not include any information from the educational record, then the maximum fee that can be charged is £10.

If a parent exercises their independent right under the Regulations simply to view the educational record, then no charge may be made. If the parent requests a copy of the educational record under the Regulations, the charges work on the fees scale basis shown above for subject access requests for educational records.

5 Is there an obligation to translate documents?

If a parent requests a copy of their child's educational record under the Regulations and requests that the information is supplied in another language or form, for example Braille, then the education authority and independent school should comply with that request unless they consider the request unreasonable.

No further charges can be made for providing information in another language or form.

More information

If you need any more information about this or any other aspect of data protection, please contact us.

Phone: 01625 545745 or 0131 301 5071 (ICO in Scotland)

E-mail: Scotland@ico.gsi.gov.uk or use the online enquiry form on our website

Website: www.ico.gov.uk